

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

JANE DOE,	.
	.
Plaintiff,	.
	. Case No. 21-cv-11183
vs.	.
	. Newark, New Jersey
DOUGLAS WISCH,	. October 5, 2021
	.
Defendant.	.
	.

TRANSCRIPT OF RECORDED OPINION
BY THE HONORABLE MICHAEL A. HAMMER
UNITED STATES MAGISTRATE JUDGE

This oral opinion has been reviewed and revised in accordance with L. Civ. R. 52.1.

APPEARANCES: No one was present.

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1 (Commencement of proceedings)

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3 THE COURT: Before the Court is the matter of Jane
4 Doe v. Douglas Wisch, Civil No. 21-11183. This matter comes
5 before the Court by way of a joint discovery dispute letter
6 filed on October 4, 2021, D.E. 5.

7 Plaintiff seeks from the defendant the following
8 items: (1) copies of Defendant's business and personal tax
9 returns, both federal and state, from the period of 2017
10 through 2020; (2) copies of federal and state estate tax
11 returns for the Estate of Marvin Wisch and/or the Marvin
12 Wisch Revocable Trust; and (3) an accounting of the income,
13 assets, and distributions to date of Marvin Wisch's Estate
14 and/or the Marvin Wisch Revocable Trust.

15 The Defendant objects to these discovery demands on
16 the basis of relevance.

17 By way of background, Plaintiff has sued the
18 Defendant pursuant to the New Jersey Sexual Abuse Act,
19 N.J.S.A. § 2A:61B-1 and 2A:14-2b. Plaintiff also alleges
20 claims for intentional infliction of emotional distress and
21 invasion of privacy.

22 Defendant has posed counterclaims for, inter alia,
23 defamation.

24 Plaintiff alleges that she and the Defendant are
25 stepsister and stepbrother and that the Defendant is four

1 years and five months older than the Plaintiff. Plaintiff
2 alleges that the Defendant sexually molested the Plaintiff
3 for a seven-year period beginning when Plaintiff was eight
4 and Defendant was approximately thirteen and ending when
5 Plaintiff was 15 and the Defendant was 19 or 20 years old.
6 The Defendant denies abusing or assaulting the plaintiff and,
7 in fact, says that there was never any sexual contact between
8 them. Defendant alleges that Plaintiff's claims are
9 defamatory and made to punish Defendant because Marvin Wisch,
10 Defendant's father and Plaintiff's stepfather, ultimately cut
11 Plaintiff out of his will.

12 Plaintiff argues that the discovery she seeks is
13 "necessary to assess the alleged damage to Defendant's
14 reputation. Evidence relating to the Marvin Wisch Estate is
15 relevant pursuant to Rule 401 because it has 'a tendency in
16 reason to prove' Defendant's counterclaim." See Joint
17 Discovery Dispute Letter, D.E. 5, at page 2.

18 In response, Defendant acknowledges that he has
19 filed counterclaims for defamation as well as intentional
20 infliction of emotional distress based on Plaintiff's claims
21 being false and that Defendant's theory, as set forth in the
22 answer and counterclaims, is that Plaintiff brought this
23 lawsuit in retaliation for Plaintiff being disinherited upon
24 the death of Marvin Wisch. However, Defendant argues that
25 the tax returns are not relevant and Plaintiff certainly has

1 not met the heightened standard for the production of tax
2 returns that case law has established. Defendant argues that
3 the financial information that Plaintiff seeks in this
4 dispute is neither relevant to whether the assaults that she
5 alleges actually occurred nor to Defendant's defamation
6 claim.

7 The Court considers the current dispute in the
8 context of Federal Rule of Civil Procedure 26 and notes that
9 this issue lies within the sound discretion of this Court.
10 See Salamone v. Carter's Retail Inc., Civil No. 09-5856, 2011
11 WL 1458063 at *2 (D.N.J. April 14, 2011). As a general
12 proposition, Rule 26 is to be construed fairly broadly and
13 should encompass "any matter that bears on, or that
14 reasonably could lead to other matter that could bear on, any
15 issue that is or may be in the case." See Oppenheimer Fund,
16 Inc., v. Sanders, 437 U.S. 340, 351 (1978); Halpin v.
17 Barnegat Bay Dredging Company, Civil No. 10-3245, 2011 WL
18 2559678, at *10 (D.N.J. June 27, 2011).

19 However, Rule 26 is not without its limits. And,
20 in fact, "the trial court retains discretion to determine
21 that a discovery request is too broad and oppressive,"
22 Schneck v. IBM, 1993 WL 765638, at *2 (D.N.J. July 27, 1993),
23 or that the discovery sought is plainly not relevant to the
24 claims or contentions in the litigation. Further, relevance
25 by itself is not sufficient to find that tax returns are

1 discoverable. "Congress has guaranteed that federal income
2 tax returns will be treated as confidential communications
3 between a taxpayer and the government." See DeMasi v. Weiss,
4 669 F.2d 114, 119 (3d Cir. 1982). The Third Circuit
5 explained this protection is intended to encourage full
6 disclosure to the taxing authorities by protecting the
7 confidentiality of the personal information contained in the
8 return. Id. at 120. Therefore, the Court must balance this
9 privacy interest against the requesting party's "need for the
10 information, its materiality, and its relevance." Id.

11 A party seeking an order compelling the disclosure
12 of tax returns must demonstrate a compelling need, in that
13 the tax information is not only relevant, but also the
14 information is not otherwise readily obtainable. See Wiggins
15 v. Clementon Police Department, 2009 WL 2382240, at *3 - *4
16 (D.N.J. July 30, 2009) ("In setting the appropriate bounds of
17 discovery in this case the Court is mindful that the Third
18 Circuit recognizes the public policy favoring non-disclosure
19 of income tax returns as confidential communications between
20 a taxpayer and the government. 'While tax returns do not
21 enjoy an absolute privilege from discovery, a public policy
22 against unnecessary public disclosures arises from the need,
23 if the tax laws are to function properly, to encourage
24 taxpayers to file complete and accurate returns'"; see also
25 Schneck, 1993 WL 765638, at *8. Indeed, even if a party's

1 tax return contains relevant financial information, the Court
2 must protect it against disclosure if the party resisting
3 disclosure demonstrates good cause to uphold the expectation
4 of privacy and "the availability of reliable financial
5 information from other sources." See Farmers and Merchants
6 National Bank v. San Clemente Financial Group Securities,
7 Inc., 174 F.R.D. 572, 585 (D.N.J. 1997). Therefore,

8 To determine whether tax returns
9 in a given case are discoverable,
10 courts have applied a two-part
11 test. First, the party seeking
12 discovery bears the burden of
13 demonstrating relevance. If
14 relevant, the tax returns will be
15 discoverable unless the party
16 resisting discovery meets its
17 burden of proving there is no
18 compelling need for the tax
19 returns because the information
20 available in the tax returns can
21 be obtained from other sources.

22 Fort Washington Resources Inc. v. Tannen, 153
23 F.R.D. 78, 80 (E.D. Pa. 1994).

24 In this case, the Court must conclude that
25 Plaintiff has failed to articulate the relevance of the
26 requested returns. The Court's independent analysis of the
27 claims in this case and Plaintiff's discovery request does
28 not reveal that the information Plaintiff seeks, including
29 but not limited to the tax returns, are relevant under
30 Rule 16. Plaintiff does not argue, nor can the Court
31 discern, that the information Plaintiff seeks here is

1 relevant to Plaintiff's claims against Defendant for sexual
2 molestation, intentional infliction of emotional distress,
3 and invasion of privacy. Plaintiff argues that the discovery
4 is relevant to Defendant's counterclaim for defamation, but
5 the Court struggles to understand how and Plaintiff's portion
6 of the joint letter fails to provide that explanation. The
7 Court considers the elements of defamation. Defamation
8 requires a party to show (1) that the Defendant communicated
9 to a third person, (2) a false statement about the Plaintiff,
10 (3) that "tended to harm the Plaintiff's reputation in the
11 eyes of the community or to cause others to avoid Plaintiff."
12 W.J.A. v. D.A., 416 N.J. Super. 380, 384-85 (App. Div. 2010),
13 affirmed and remanded, 210 N.J. 229 (2012) (quoting
14 McLaughlin v. Rosanio, 331 N.J. Super. 303, 312 (App. Div.
15 2000)).

16 Plaintiff fails to explain, nor does the Court's
17 independent analysis reveal how the information sought by
18 Plaintiff in this dispute is relevant to any of the elements
19 of defamation. Moreover, to the extent Defendant's
20 counterclaim for defamation arises from the filing of the
21 complaint in this matter, as the Defendant suggests, see,
22 e.g., Joint Discovery Dispute Letter, D.E. 5 at *3, it is
23 difficult to imagine from a time frame standpoint how records
24 from the period of 2017 to 2020 are relevant in establishing
25 or probing whether, in fact, the Defendant's reputation has

1 | been harmed by the alleged defamatory statements.

2 | Plaintiff did not file this action until 2021.

3 | And, therefore, to the extent that the claim for defamation
4 | rises from the filing of the complaint, the injuries arising
5 | from that alleged defamation would not have begun to accrue
6 | until the filing of the complaint in 2021. Further, to the
7 | extent that Plaintiff seeks this information to probe the
8 | Defendant's assertion that Plaintiff's motivation arose from
9 | being disinherited, Plaintiff fails completely to explain why
10 | the tax returns and an accounting of the income, assets, and
11 | distributions from the Marvin Wisch Estate would be relevant.
12 | To be sure, discovery establishing whether Marvin Wisch, in
13 | fact, removed Plaintiff from his will would plainly be
14 | relevant.

15 | Although Plaintiff did not address it in her
16 | section of the joint letter, the Court has also considered
17 | the damages generally available to a party alleging
18 | defamation in an effort to determine whether the discovery
19 | sought is relevant. This analysis leads to the same
20 | conclusion, specifically that the financial discovery that
21 | Plaintiff seeks here is simply not relevant to the defamation
22 | claim. As a general proposition, "Damages which may be
23 | recovered in an action for defamation are: (1) compensatory
24 | or actual, which may be either (a) general or (b) special;
25 | (2) punitive or exemplary; and (3) nominal." W.J.A., 210

1 N.J. at 239 ("Actual damages ... refers to the real losses
2 flowing from the defamatory statement.... is not limited to
3 out-of-pocket loss," but includes "impairment to reputation
4 and standing in the community," along with personal
5 humiliation, mental anguish, and suffering to the extent that
6 they flow from the reputational injury." Id. (quoting Gertz
7 v. Robert Welch, Inc., 418 U.S. 323, 350 (1974)).
8 Additionally, New Jersey allows for presumed damages, a
9 procedural device that allows the party to obtain a nominal
10 damages award "without proving actual harm to his
11 reputation." W.J.A., 210 N.J. at 233, 239.

12 The Court cannot discern from the panoply of
13 damages available to a party alleging defamation how the
14 financial information that Plaintiff seeks here would be
15 relevant. That is so particularly because, as the Court
16 noted, it appears that the Defendant alleges that the
17 defamation itself are the Plaintiff's claims in this
18 litigation, and, therefore, damages accruing from that would
19 not have begun until the filing of the litigation in 2021.

20 For those reasons, the Court concludes that
21 Plaintiff's discovery requests should be denied for lack of
22 relevance. But the Court also notes that Plaintiff has
23 failed to carry her burden to establish the first prong of
24 the two-part test for the discovery of tax returns.

25 For those reasons, the Court will deny Plaintiff's

1 request for the financial information sought in the
2 October 4, 2021, joint letter.

3 That constitutes the opinion of the Court. An
4 appropriate order will issue.

5 (Conclusion of proceedings)

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Certification

I, SARA L. KERN, Transcriptionist, do hereby certify that the 11 pages contained herein constitute a full, true, and accurate transcript from the official electronic recording of the proceedings had in the above-entitled matter; that research was performed on the spelling of proper names and utilizing the information provided, but that in many cases the spellings were educated guesses; that the transcript was prepared by me or under my direction and was done to the best of my skill and ability.

I further certify that I am in no way related to any of the parties hereto nor am I in any way interested in the outcome hereof.

s/ *Sara L. Kern*

15th of February, 2022

Signature of Approved Transcriber

Date

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